



**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number: PA/06628/2017

THE IMMIGRATION ACTS

**Heard at Field House
On 21 November 2018**

**Decision & Reasons
Promulgated
On 12 December 2018**

Before

DEPUTY UPPER TRIBUNAL JUDGE HILL QC

Between

**K W
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr M Moriarty, Counsel

For the Respondent: Ms N Willocks-Briscoe, Home Office Presenting Officer

DECISION AND REASONS

1. This is an appeal from the decision of First-tier Tribunal Judge Ross which was promulgated on 31 August 2018. In short, the appellant is a young man from Afghanistan who travelled to this country and claimed asylum upon arrival.
2. There were a number of factual issues which the judge was required to address but the principal issue concerned the claimed relationship of the appellant with two named individuals said to be his brothers. A body of DNA evidence was placed before the court in this regard, most

significant of which was an email emanating from the DNA expert to the appellant's solicitor which drew upon several DNA markers and concluded, "This observation would suggest that the three individuals share the same mother and father".

3. It is also clear, as has been painstakingly submitted by Ms Willocks-Briscoe for the Secretary of State, that both the initial DNA report and the subsequent email exchanges indicate that there are caveats that apply in all forms of DNA testing. In relation to siblings and half-siblings it is notoriously more problematic to secure statistically robust final resolutions than in determining parental DNA. Ms Willocks-Briscoe very helpfully took me to the decision of Mr Anthony Haden QC sitting as a Deputy High Court Judge in the case of **Re F (Children) (DNA evidence) [2007] EWHC 3235 (Fam)**. I need not read the text of the judgment into this decision, suffice to say that it makes abundantly plain how sibling testing for DNA can be inconclusive and much turns upon the questions put by the parties of the experts and the background information.
4. The judge in this instance dealt with the documentary evidence starting at paragraph 17 where he refers to the DNA testing and the documentation to which I have already made reference, returning in paragraphs 21 and following to a more detailed discussion of the situation. The judge comes to the conclusion that the case of a sibling relationship is not made out and that in all likelihood the appellant is probably "more distantly related" to the two individuals claimed as brothers.
5. Ms Willocks-Briscoe argues that the judge's conclusion is one that was perfectly open to him on the evidence. She points to the fact that the expert opinion was not conclusive, that it was expressed to be conditional upon other factors and that in the course of several paragraphs of detailed analysis the judge grapples with those factors and seeks to come to the best conclusion possible on the evidence which is available. Ms Willocks-Briscoe invites me to find that there is no error of law in the way in which the judge sought to do the best he could on the material before him to come to robust and sustainable conclusions.
6. Having reflected and re-read the material, I regret I cannot accept that submission. On my reading of the expert evidence, although of course it cannot be said to be conclusive, it certainly points to the likelihood of these three individuals being full siblings. To depart from that expert intimation would require detailed reasoning and cogent argumentation which I do not find to be present in this decision.
7. It is accepted by both Ms Willocks-Briscoe and Mr Moriarty that if I come to the view that the judge in this instance did not adequately engage with the expert evidence, this is so central to the issues in dispute and

to the credibility of the appellant that it infects every part of the decision.

8. In those circumstances, bearing in mind the discomfort I have with the way in which the judge has dealt with this aspect, it follows that the decision must be set aside, and remitted to the First-tier Tribunal for a rehearing *de novo* with no facts preserved.
9. There may be applications to adduce further evidence. It would not be appropriate for me to give formal directions in that regard, this matter being now within the province of the First-tier Tribunal but the sooner any new material is formally lodged and served the better.

Notice of Decision

- (1) The decision of the First-tier Tribunal is set aside
- (2) The appeal is remitted to the First-tier Tribunal to be decided afresh by a judge other than Judge D Ross.
- (3) No factual findings are preserved.

Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008

Unless and until a Tribunal or court directs otherwise, the appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the appellant and to the respondent. Failure to comply with this direction could lead to contempt of court proceedings.

Signed *Mark Hill*

Date

7 December 2018

Deputy Upper Tribunal Judge Hill QC